

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A – 1:30 p.m.
Indianapolis, Indiana
July 21, 2009

The meeting was called to order by Mr. Rick Dyar, Vice Chairperson, at 1:30 p.m. Those present for all or part of the meeting were:

Mr. Tom Barnett
Mr. Marlin Chambers
Mr. Chuck Himes
Dr. Ted Niemiec
Mr. Jason Ward
Ms. Deborah Albright, Board Counsel
Mr. Howard Cundiff, (Proxy, Indiana State Department of Health)
Mr. Tom Hohman (Proxy, Department of Natural Resources)

A quorum was present.

In addition, the following Indiana Department of Environmental Management (IDEM) staff members were present for all or part of the meeting:

Mr. Thomas Easterly, Commissioner
Mr. Bruce Palin, Assistant Commissioner, Office of Land Quality
Mr. Mike Dalton, Section Chief, Rules Development Branch Section, Office of Legal Counsel
Mr. Steve Mojonier, Rules Development Branch, Office of Legal Counsel
Ms. Lynn West, Rules Development Branch, Office of Legal Counsel
Ms. Kiran Verma, Rules Development Branch, Office of Legal Counsel
Ms. Lydia Kuykendal, Rules Development Branch, Office of Legal Counsel
Ms. Janet Pittman, Rules Development Branch, Office of Legal Counsel
Ms. Betsy Rouse, Rules Development Branch, Office of Legal Counsel
Ms. Sandra Flum, Director, Community Relations
Ms. Nancy King, Branch Chief, Rules Development Branch, Office of Legal Counsel
Ms. Ann Long, Attorney, Office of Legal Counsel
Mr. Larry Studebaker, Section Chief, Geological Services Section, Office of Land Quality
Ms. Daniela Klesmith, Permits Branch, Office of Land Quality
Mr. Craig Barker, Chemist, Science Services Branch, Office of Land Quality

1. Vice Chairperson Dyar asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of March 17, 2008. There being none, Vice Chairperson Dyar asked for a motion to approve the minutes. Mr. Marlin Chambers so moved and Dr. Ted Niemiec seconded. The motion passed unanimously. APPROVAL OF MINUTES
2. Vice Chairperson Dyar asked Mr. Bruce Palin, Assistant Commissioner, to address the Board. Mr. Palin deferred to Ms. Lynn West for an update on rules. IDEM REPORTS

Ms. West distributed the Rulemaking Projects list and said that there were some new rules that would be taken to the Water Pollution Control Board regarding confined animal feeding operations. The other new rule is LSA #09-206, Rumpke Delisting, which the board will be hearing at this meeting. Ms. West also presumed that the board members had completed their ethics training.

3. Vice Chairperson Dyar announced the following rulemaking actions:

- a. LSA #06-70 – Preliminary adoption of amendments to rules at 329 IAC 11, concerning Solid Waste Processing Facilities. The draft rule was published in the Indiana Register on January 14, 2009, and the public hearing was noticed in the Indiana Register on January 14, 2009, at DIN: 20090114-IR-329060070PHA. A change of hearing was notice on May 6, 2009 at DIN20090506-IR-329060070CHA.
- b. LSA #09-206 - Preliminary Adoption of new rules at 329 IAC 3.1, concerning the exclusion of a hazardous waste from regulation (delisting). The draft rule was published in the Indiana Register on April 8, 2009. This hearing was noticed in the Indiana Register on April 8, 2009, and a change of hearing was noticed on April 22, 2009.

Vice Chairperson Dyar said that the stated rules were available for public inspection in the file room of IDEM, located on the 12th floor of the Indiana Government Center North, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. Instructions were given to the public regarding offering oral statements and comments to the Board. He said that all comment cards should have been submitted. The court reporter was affirmed.

4. Vice Chairperson announced the public hearing to consider preliminary adoption of LSA #06-70, Amendments to Rules concerning Solid Waste Processing Facilities at 329 IAC 11. He introduced Exhibit A, the draft rule, into the record of hearing. He then asked Ms. Lynn West to address the Board.

PRELIMINARY ADOPTION
OF AMENDMENTS TO RULES
CONCERNING SOLID WASTE
PROCESSING FACILITIES
AT 329 IAC 11

Ms. West reviewed the history of the existing transfer station rule and noted that it had not been substantially revised since the early 1990s. She stated that the objectives of this rulemaking are to revise the rule and clarify the language of 329 IAC 11, to continue constancy with related statutes and other solid waste rules, and to improve the order of the rule for easier location of applicable requirements.

Ms. West explained that this rule will enable 329 IAC 11 to be consistent with the standards in 329 IAC 10 and some permitting requirements. Restructuring of 329 IAC 11 will allow for clearer understanding of the rule.

She then outlined a list that was separated into three objectives for this rulemaking as follows:

- a. Clarity changes— will make certain that the meaning of major and minor modifications are consistent, by having an exclusion of transfer and storage of enclosed (not opened) containers of solid waste other than municipal solid waste. Also, there will be a modification to the zoning requirements. The expiration of a permit, if construction of the facility is not begun within a time frame, will be added.

Application requirement and design standards—the information presented on a plot plan at 329 IAC 11-9-2(h) is going to be modified. There will be requirements for the facility to be in an enclosed building with lockable doors. Waste processing and storage area is to be on an impermeable floor surface. The liquid waste and wastewater holding areas are to have secondary containment procedures for both.

Operating standards—Required information on the facility sign will be changed. Floor cleaning in the loading areas so waste and waste residues are contained. Emergency or contingency

procedures for spill, fire, and containment release are added and closure and post-closure standards.

- b. Consistency changes—Definitions in 329 IAC 10 were reviewed, and IDEM made them consistent with 329 IAC 11. Application procedures will now be consistent. Various provisions in 329 IAC 11-15, and we're going to establish financial assurance with the pre-operation requirements.
- c. Organizational Changes—IDEM merged several sections and deleted some.

Minimal impact is associated with this rulemaking. It does not impose any extra requirements, but clarifies and makes consistent and improves the organization of the existing rule.

Ms. West then recommended that the board preliminarily adopt Amendments to Rules Concerning Solid Waste Processing Facilities at 329 IAC 11 as presented in Exhibit A. She stated that technical staff were in attendance to answer any questions.

Vice Chairperson Dyar asked if there were questions from the Board. Mr. Tom Barnett asked where the definition of a solid waste processing facility could be found. Ms. West asked if he had looked in the statute, but Mr. Barnett said he didn't find it in there. Mr. Palin stated that it could be found in the Indiana Code, and he noted that it had been amended a few times in legislative sessions and diverse facilities added to that definition to include waste treatment and plasma arc facilities. Ms. West also added that this rule also refers to any statutory definitions applicable in this rule. Mr. Palin said if one read the entire solid waste processing rules at 329 IAC 11, one would see the definition of solid waste processing facility that should be equal to what is in the statute. Ms. West and Mr. Palin agreed that the statute would take precedence.

Mr. Barnett then said his next question would be under solid waste--from the code #9 and asked if one of the definitions is a solid waste processing facility that isn't located on operating permitted landfill would be a solid waste processing facility, according to this rule. He was alluding to the heavy industries that solidify non-hazardous waste on site. He said he deduced the State would include those as a solid waste processing facility. Mr. Palin stated that would be excluded in a different portion of the rule that excludes on-site processing of solid waste. He referred to page 18 or 33 pages in exclusions, number #6 processing except for incineration that takes place at the generating facility. Subdivision 6 under 11-3-1 is the on-site exception.

Vice Chairperson Dyar asked if there were any other board questions for Ms. West. There being no further Board discussion or questions, he then asked Ms. Angela Dorrell, Attorney with Plews Shadley Racher & Braun, to offer public comment to the Board.

Ms. Dorrell began by stating that she was representing ESI Environmental, Incorporated. She said she would be brief because ESI comments were being provided to the Board. She explained that ESI is a used oil facility governed by federal and state used oil facility regulations, in addition to being permitted and governed under 329 IAC. Ms. Dorrell stated that ESI opposes the draft rule changes for 3 main reasons.

1. Inconsistent changes with the federal and state regulations governing the used oil facility.
2. Draft changes are not functionally equivalent to existing and corresponding solid waste landfill regulations.
3. The actions taken under the amended rule could violate due process requirements.

Ms. Dorrell requested that the Board extend the comment period to additionally consider the wide-reaching consequences of the draft rule changes and also to allow for revision of the draft rule to show the exclusion of the used oil facilities. She said she would answer any questions from the Board.

Mr. Chuck Himes asked Ms. Dorrell if the opposition referred to a particular section or the whole rule, to which she replied that it is the proposed revision to 329 IAC 11-9-1(c) that ESI deems unnecessary and inappropriate. She stated that it was much broader than the existing rules for permit modification, revocation, termination, permits for solid waste landfills and the statutory good character requirements. She said, generally speaking, ESI does not believe that the proposed changes should be applicable to it as a used oil facility. She said that maybe one consideration would be to make an exception for said facilities in IAC 11-9-1(c) and also it is unnecessary to add Subdivision 4. Please refer to pages 11 through 13 of the official transcript for a verbatim account.

Vice Chairperson Dyar then asked Mr. Bill Pareskeves, Andrews Engineering, to present his comments to the Board.

Mr. Pareskeves said that his comments consisted of clarification issues, which included the definition of “Emergency Response Plan” under 11-2-10.1, the release of gasses or leakage, leachate. He said he would like to add the word “immediately” to the “threat to human health or environment” to stay within the emergency nature of the plan.

Mr. Pareskeves’ next comment referred to 11-13.5-6(a) (1), which he stated seemed to be a redundancy in the wording about the condition of the doors which he said should be addressed as a grammatical condition.

He also had a comment on 11-13.5 6(a)(4), which requires dual containment or secondary containment of liquid storage systems in one part of the rule, but noted that the other part references that the storage system should meet local codes. He said local codes are not usually involved in dual containment of wastewater facilities, that’s usually more of a function of petroleum storage.

Mr. Pareskeves then referred to 11-13.5-6(b) regarding processing areas to be clean and litter-free. He stated that he would like to add to the words “when not in use.” He said it’s obvious that the air condition can’t be applied when the processing facilities are being used. He then said under 11-13.5-6(e) one of the criteria is the word “unsightliness” which is a little vague and not defined and could be subject to interpretation by different people. He said the difference would be open processing or behind a partitioned enclosure. He stated that the word should either be dropped or clarified.

He then referred to 11/13/5-6 (h) where an exclusion or exception given to existing outdoor processing facilities would not be required to install a building with doors. He recommended that the exemption be included to all existing facilities, the reason being he knew of one facility that does not have doors and it would be hard to go back and add doors.

In conclusion, Mr. Pareskeves said if outdoor processing facilities were exempted, three-sided structures with an open side should also be exempted.

Mr. Pareskeves then presented a copy of his comments to the board.

One other request he had was for the agency to consider incorporating the storm water permitting rules from the water office in with the transfer station, which would be similar to what has been done with the sanitary landfill facilities and it provides permittees with one-stop shopping rather than having to do two separate permitting operations.

Mr. Pareskeves then asked if there were any questions.

Mr. Chuck Himes asked Mr. Pareskeves if the purpose of the doors is to retain materials or to prevent access. Mr. Bruce Palin answered it would be for both. Mr. Himes speculated that some operations don't lend themselves to the doors. He also asked if further conversation will be offered. Mr. Palin said that since this rule is at the preliminary adoption stage, that these are new comments that didn't come in during the comment period. Since they weren't introduced previously, IDEM hadn't had time to consider them or include changes that would be agreeable. He said there is an opportunity for staff to review the comments presented here and make suitable changes. Mr. Tom Barnett raised the question of preliminarily adopting the rule and being able to change it at a later date. Mr. Palin replied in the affirmative. Please refer to pages 13 through 16 of the official transcript for a verbatim account.

Vice Chairperson Dyar concluded the hearing. He opened the floor for board discussions and stated that questions could be answered by IDEM staff.

Mr. Tom Barnett stated that the Board needed to review these issues and discuss them with staff. Mr. Jason Ward suggested that these issues be considered. Mr. Palin replied that the comments provided at this meeting would be considered as part of the comment period and that changes could be made between preliminary adoption and final adoption. He also said that at the final adoption the hearing would be opened with the revised rules and also for people who still have comments where those concerns could be addressed.

Vice Chairperson Dyar asked for a motion to preliminarily adopt Exhibit A, the rule as presented. Mr. Jason Ward so moved and Mr. Howard Cundiff seconded. The motion was passed unanimously.

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| 5. Vice Chairperson Dyar announced the public hearing to consider preliminary adoption of #09-206, concerning Exclusion of a Hazardous Waste from Regulation (Delisting), at 329 IAC 3.1. He then introduced Exhibit B, the proposed rule, into the record of the hearing. He asked Ms. Lydia Kuykendal to address the Board. | PRELIMINARY ADOPTION
NEW RULES AT 329 IAC 3.1
EXCLUSION OF A
HAZARDOUS WASTE
FROM REGULATION
(DELISTING) |
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Ms. Kuykendal explained the process of delisting is the exclusion of a hazardous waste that is listed in 40 CFR 261, Subpart B for regulation as hazardous waste if the generator can show that the waste doesn't meet the criteria for which it was listed as a hazardous waste and that it won't show a hazardous waste trait. The EPA authorized Indiana on January 4, 2001. Under IAC 13-22-2-3, generators of hazardous waste may request IDEM to exclude a particular hazardous waste. The request must include the information and meet the criteria required by 40 CFR 260.22. Before requesting delisting, the waste generator must sample the waste over time and analyze the waste for hazardous waste as listed in 40 CFR 261, Appendix 8. This testing must be done following a sampling and analysis plan approved by IDEM. The data resulting from this testing is incorporated into the petition for delisting.

Ms. Kuykendal stated that on July 15, 2008, Rumpke of Indiana petitioned IDEM to exclude a hazardous waste from listing. The hazardous waste delisting that is sought is 68,000 cubic yards of wastewater treatment sludge from electroplating operations, hazardous waste code F006, generated by Rumpke. Rumpke excavated the waste and placed it in a Corrective Action Management Unit or CAMU built adjacent to Medora Sanitary Landfill 545 County Road 870 West Medora, Indiana. She said the CAMU is permitted under 329 IAC 3.1. Upon adoption of this rule, the solid waste permit for the Rumpke facility at Medora will be amended to include the CAMU. The petition meets all criteria for delisting petitions under 329 IAC 3.1-5. The petition was evaluated by the Science Services Branch of the Office of Land Quality using current procedures and methods used by EPA.

Ms. Kuykendal said that to qualify for the delisting, Rumpke complied with all of the conditions as follows: the delisted waste did not exceed any of the delisting concentrations for constituents of

concern, no more than 68,000 cubic yards of waste was delisted, and the whole Rumpke facility continues monitoring groundwater as required by the solid waste permit. Ms. Kuykendal finished by stating that technical staff was present to answer any questions. Chairperson Dyar then asked the board if there were any questions.

Mr. Tom Barnett asked Ms. Kuykendal to summarize the rule. She stated that Rumpke deposited 68,000 yards of waste in a CAMU. Then they sampled it over a period of time and established that it didn't meet the hazardous waste criteria any more. Mr. Barnett asked if it was F019-006, to which Ms. Kuykendal replied yes. She said when they sampled it, it no longer met the criteria for that so they petitioned IDEM. IDEM's Science Services branch reviewed the petition and decided that it didn't meet the criteria for a hazardous waste so it then didn't need to be treated per se and it can be treated as a solid waste. She also said if the rule is final adopted, it stays there but they don't have to manage it as a hazardous waste. Mr. Barnett then asked if there would be less monitoring and sampling. Ms. Kuykendal replied yes, and said that Mr. Craig Barker from IDEM's Chemistry Department was in attendance and could provide additional information.

Mr. Jason Ward asked if IDEM independently sampled this. Ms. Kuykendal stated she believed Rumpke did the sampling and IDEM verified the numbers. Mr. Barnett asked if Rumpke used an outside lab, to which Ms. Kuykendal replied in the affirmative. Mr. Bruce Palin said that this waste stream was subject to other testing that IDEM did. He said it was part of an old disposal site where the F006 disposed of in shallow trenches on the property adjacent to the location of the landfill. He said that Rumpke bought the property, excavated the disposed material which is F006 material and combined it and put it into a CAMU unit in a corner of their landfill. So in the past it had been subject to sampling by our office and testing. Mr. Ward asked what was the make-up of the material. Ms. Kuykendal replied that it was wastewater treatment sludge from electroplating operations. Mr. Palin added that he thought chromium was the primary contaminant. Mr. Marlin Chambers asked if it would stay at the site where it is located and not being added to. Ms. Kuykendal replied that it wasn't. Mr. Chambers then asked if it would be treated as a solid waste and have less monitoring, to which she answered in the affirmative.

Vice Chairperson Dyar then stated that commentors would be given five minutes to provide testimony. He said he didn't have any appearance cards and asked if anyone wanted to comment on the rule.

Mr. Ernie Smith, Cummins Engine Company, stated that he would like to speak. He said he was curious to know how the chromium concentration within the treatment sludge was naturally attenuated over time or whether there was a formal processing procedure in place? He also asked how this works.

Mr. Palin asked Mr. Craig Barker to describe the waste material and how it was generated and the constituents.

Mr. Craig Barker, Environmental Chemist in the Science Service branch, said he evaluated the petition and the analytical results. He stated that the metals would probably not be attenuated, but that it was in the corrective active management unit (CAMU), which is a hazardous waste cell built to the hazardous waste landfill standards. Therefore, it is self-contained—it is also when they excavated the waste, they over-excavated the soil around it and something less than half of the material in the CAMU is waste, the remainder is the soil around it. The purpose was to have the leachate as not a listed waste so they could handle it as a solid waste.

He said since they have said they will eventually make that a cell in solid waste landfill and then they will be monitored under the solid waste permit, the ground water from the entire solid waste permit area. Mr. Barnett asked if this meant that it simplifies and gives them a little bit less monitoring but they are still monitoring the whole site. To which Mr. Barker replied in the affirmative. Mr. Jason Ward asked if they put this in a lined cell. Mr. Barker replied in the affirmative and said that the

CAMU is basically a hazardous waste landfill cell; it was built to the same standard, just under different set of regulations. Mr. Ward then asked if these were capped, to which Mr. Barker answered in the affirmative.

Mr. Palin explained that the treatment process reduced hexavalent chromium to trivalent chromium. Therefore, the material was tied up with a hydroxide treatment that binds up the metals within the sludge. Mr. Barker added that when it was excavated, some hazardous waste permit employees looked at it and took pictures. The color of the waste was indicative of soil waste. He said it had been generated in the late 1970s and disposed of improperly. He explained that when Rumpke approached us for a CAMU permit, the Agency thought it was basically a no-brainer to change it from an inappropriately disposed area into a regulated unit. He said that the original sampling was done in 2002, and when they approached IDEM for the delisting in 2008, they went back and re-sampled it for an extra seven parameters also.

Mr. Jason Ward asked if the benefit of improperly dumping is going to be appropriately handled and benefit Rumpke and they can expand and use that area where this was originally stored. Mr. Barker answered that their reason of putting it into the CAMU was to be able to go into that area.

Mr. Ward asked if chromium breaks down over time naturally or would it always be there. Mr. Barker replied that it would remain a metal, and that it might change from the toxic hexavalent to less toxic trivalent chromium and that was done in the wastewater treatment process. Mr. Ward asked if there is a better way to treat chromium is to always be stored in this particular cell. To which Mr. Barker replied in the affirmative and that it is a permanent disposal unit. For a verbatim account of Mr. Craig Barker's comments, please see pages 23 through 26 of the official transcript.

Vice Chairperson Dyar concluded the hearing. There were no further questions from the Board or any other individual, so he asked for a motion to preliminarily adopt the rule as presented. Mr. Chuck Himes moved and Mr. Howard Cundiff seconded. The motion was passed unanimously.

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| 6. | Vice Chairperson Dyar announced the presentation of the non-rule policy document, MP-005-R1-NPD, Compliance and Enforcement Response Policy, IC 13-30-3-3, IC 13-30-7, IC 13-30-10, and IC 13-14-5-3), presented by Bruce Palin, Assistant Commissioner, Office of Land Quality. Mr. Palin explained this non-rule policy document of compliance and enforcement response policy or (CERP) provides guidance to compliance and enforcement staff on the proper level of administrative enforcement response for different types and classes of violations. It explains the different levels of staff engaged in the process of initiating and reviewing proposed administrative enforcement actions; it also provides a general description of the different classes of violations. Mr. Palin described the 3 classes of violations. IDEM's Commissioner wished to make this internal policy a public policy by publishing it as a non-rule document for clarity and stated that it has existed in the agency. Although this NPD concentrates on IDEM's enforcement responses, the agency has several tools available in working to meet the Commissioner's goal. Education, availability of our compliance information, and compliance assistance visits for IDEM's compliance staff are tools that the agency uses to ensure that people understand their responsibility in complying with IDEM's regulations and follow-up inspections. Please refer to pages 27-30 of the official transcript for Mr. Palin's verbatim account. | NONRULE
POLICY DOCUMENT
MP-005-R1-NPD |
| 7. | Vice Chairperson Dyar introduced Ms. Sandra Flum, IDEM Director of Community Relations, to give the Board a 2009 Legislative update. Ms. Flum discussed the following: | |

- a. **SEA Bill 202** – transferred the duties of indoor lead-based paint from IDEM’s Air program to the Department of Health, which is better suited to indoor activities. However, land-based lead mediation issues would still be handled by IDEM.
- b. **SEA Bill 221** – confined animal feeding – most of it is a water program. Disclosure requirements, either disclosing past character behaviors or requiring good character programs, loosely modeled after the good character requirements of landfill solid waste processing. Permits pending in the Office of Land Quality were aggressively pursued for violations in another state or country.
- c. **HEA Bill 1191** – regulating manure application. Previously, the State Senate’s Office has had the authority to regulate manure or fertilizer materials, and this bill explains what that is and what that means and it includes animal byproduct or animal waste. The State’s Chemist Office is scheduled to meet to take public comments for work they have been doing for a few years. They will be regulating manure application by certifying people who can apply manure to the land and it will dovetail into confined feeding operations where that’s a primary activity that they take care of and we regulate from the water side.
- d. **HEA Bill 1589** – This is an electronic waste bill aiming at small businesses, homes and schools as targeted for getting their electronic waste recycled. The manufacturers will have to pay a fee for registration and will have to report to the agency. The Recycling Market Development Board will be hearing some of that issue with the recycling. It is more consumer-ended recycling rather than the registrations. However, where there are currently registered recyclers that you have passed rules about, they will be getting more material because of the push from the manufacturers to get more of their products recaptured in the recycling stream. It is a phase-in time frame, so probably 2012 they will need to show progress. Sixty per cent is the goal measured by weight and sales data.
- e. **HEA Bill 1162** – In addition to many water issues, there is a component land remediation issue which changes some of the focal point of the remediation programs to really focus on exposure pathways. Therefore, the bill recognizes local ordinances as a way of limiting exposure pathway. The agency has named a reporting requirement, the local ordinances have changed and they are to report those to the agency when they are designed in order to limit a pathway.

The EQSC, Environmental Quality Service Council, is studying some provisions. For a verbatim account of Ms. Flum’s presentation, please see pages 30 through 35 of the official transcript.

8. Vice Chairperson Dyar announced that the Board was interested in hearing **OPEN FORUM** from the public on topics of interest and potential rulemakings on Title 329. There were no speaker cards and no public comments.

9. Vice Chairperson Dyar adjourned the meeting at 2:33 p.m. **ADJOURNMENT**

The next meeting is scheduled for Tuesday, September 15, 2009, at 1:30 p.m. at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana

